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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,481	04/12/2004	Debra L. Holte	HOLTE1	3032

7590

03/28/2006

Debra L. Holte
861 South Steele Street
Denver, CO 80209

EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 03/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/822,481	HOLTE, DEBRA L.	
	Examiner	Art Unit	
	Son T. Nguyen	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

SON T. NGUYEN
PRIMARY EXAMINER

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Note, Applicant submitted amendment to change the language; however, Applicant did not delete the "such as" language. Technically, a non-compliance should be sent out; however, this will be Applicant's third non-compliance, which slows prosecution. Therefore, Applicant must correct this language in response to this office action.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1-26** are rejected under 35 U.S.C. 103(a) as being unpatentable over McMahon (EP 622018A1) in view of White (article on form PTO-1449, title "Viscoelastic foam mattresses: marketing hype or molecular miracle?") and Samms et al. (article on

form PTO-1449, title "High Moisture Vapor Transmission Thermoplastic Polyurethanes").

For claims 1,5-13,19-21,26, McMahon teaches a cushion for a pet comprising a padding layer 14b,24b; a supporting padding layer 12b,22b; a protective liner 12a,14a,22a,24a; a fabric cover 12,14,22,24. However, McMahon is silent about the padding layer made of slow recovery visco-elastic foam; the liner made of waterproof, breathable, flexible material; and the fabric cover being washable.

McMahon teaches cleaning the fabric cover but not specifically washing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to wash the fabric cover of McMahon since it is notoriously well known in the art to wash the fabric cover for cleanliness.

White teaches in her article of a known material for cushion which is a slow recovery visco-elastic foam. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the padding layer of McMahon out of a slow recovery visco-elastic foam as taught in White, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

Samms et al. teach in their article of a known material for textile industry made out of a waterproof, breathable, flexible moisture-vapor-transmission material comprising a hydrophilic laminate/coating, a microporous laminate/coating, a bi-component laminate/coating, a material fabricated from a microfiber of a sufficiently close weave to be waterproof and breathable, a material fabricated with a monolithic

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membrane, a material that is naturally oleophobic, anti-dust mite, anti-odor, or anti-bacterial, anti-stain, and anti-static. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the liner of McMahon out of a hydrophilic laminate/coating, a microporous laminate/coating, a bi-component laminate/coating, a material fabricated from a microfiber of a sufficiently close weave to be waterproof and breathable, a material fabricated with a monolithic membrane, a material that is naturally oleophobic, anti-dust mite, anti-odor, or anti-bacterial, anti-stain, and anti-static as taught in Samms et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claim 2, McMahon as modified by White and Samms et al. (emphasis on McMahon) further teaches the padding layer is a textile based material (col. 4, lines 15-28).

For claims 3-4, McMahon as modified by White and Samms et al. is silent about the padding layer made out of foam or rubber material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the padding layer of McMahon as modified by White and Samms et al. out of foam or rubber material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claim 14, McMahon as modified by White and Samms et al. (emphasis on McMahon) further teaches the fabric cover has a releasable closure (col. 5, lines 22-23).

For claims 15 & 22, McMahon as modified by White and Samms et al. (emphasis on McMahon) further teaches the fabric cover comprises top and bottom surfaces and peripheral side walls disposed between the top and bottom surfaces (see the drawings).

For claims 16 & 23, McMahon as modified by White and Samms et al. (emphasis on McMahon) further teaches the liner is sealed closed around the padding layer of foam and supporting padding layer in such a close-fitting and tight manner (col. 4, lines 50-55).

For claims 17 & 24, McMahon as modified by White and Samms et al. (emphasis on McMahon) further teaches the cushion having a shape as listed.

For claims 18 & 25, McMahon as modified by White and Samms et al. (emphasis on McMahon) further teaches the cushion may be used for a pet or a human.

Response to Arguments

5. Applicant's arguments with respect to claims 1-25 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Son T. Nguyen
Primary Examiner
Art Unit 3643

stn